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No. 82-126

In the Supreme Court
OF THE
United States

October Term, 1982

ASADOOR SOOJIAN, et al.,
Petitioners,

vs.

JOHN R. DONALDSON, et al.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondents assert that there is only one possible legitimate question presented by this matter, to wit:

Do the true facts in this matter—and not the facts as seen through the Petitioners' rose-colored glasses—indicate that Petitioners have acquired a vested right to complete development of a mobilehome park?

Further, as argued *infra*, Respondents assert that this question is neither a "federal question" nor "an important question of federal law" within the meaning of Rule 17.1 of the Rules of this Court.

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STATEMENT OF THE CASE

Respondents respectfully urge this Court to ignore the highly argumentative presentation of facts by the Petitioners in their Statement of the Case. Through the various administrative and judicial levels at which this matter has been litigated, the result has been uniformly contrary to the Peititioners' desires. Accordingly, even though the true facts in this matter are well-established, the Petitioners never tire of presenting their version of the facts as gospel.

Respondents urge this Court to consider the within Petition against the background of the true facts, as found by the Superior Court of the State of California. Rather than repeating this information here, however, Respondents respectfully request the Court to consider the Superior Court's Findings of Fact which appear in the Appendix to the Petition at pages A-70 through A-78. These Findings were adopted by the Superior Court, an independent, disinterested third party which, after having reviewed the voluminous record in this matter, arrived at the conclusion that the facts set forth therein constitute the true facts with respect to this matter, untainted by the argumentative rhetoric of either party. And, as the record indicates, the Court of Appeal of the State of California for the Fifth Appellate District has held that these Findings are supported by substantial evidence. (See Petition Appendix at page A-50)

As to the procedural history of this matter in the District Court below, the Respondents assert that the Magistrate did not deny the Petitioners the right to conduct discovery. The record will reflect that the Magistrate made no order whatsoever concerning the outstanding interrogatories. The record will further reflect that the Petitioners voluntarily agreed to postpone the scheduled depositions pending a ruling on the Respondents' motion for summary judgment.

SUMMARY OF ARGUMENT

A. Petitioners failed to raise any question of a "taking" of their property in the Court of Appeals below. Hence, this Court should refuse to entertain any such question.

B. The doctrine of vested rights is a matter of common law and does not present any federal questions for resolution by this Court.

C. The Opinion of the Court of Appeal below is not in conflict with this Court's decision in *Dobbins v. City of Los Angeles*, 195 U.S. 23 (1904), for the following reasons:

1. *Dobbins* dealt with the law of "taking" and is therefore inapposite to this matter as argued above in A.

2. In the *Dobbins* matter, the City of Los Angeles did not urge the Plaintiff's lack of vested rights upon this Court.

3. *Dobbins* is distinguishable from the instant matter upon its facts, being a case which turned upon the fact that an innocent plaintiff had been victimized by certain evil deeds perpetrated by the City of Los Angeles.

D. Because Petitioners have failed to allege the violation of any rights secured to them by any federal statute other than 42 U.S.C. Section 1983, this Court's decision in *Maine v. Thiboutot*, 448 U.S. 1 (1980), is not pertinent to this matter.

E. Petitioners failed to raise any question in the Court of Appeals below concerning the propriety of the District Court's conduct with respect to discovery. Hence, this Court should refuse to entertain any such question.

F. Even though Respondents had previously asserted that there were certain disputed factual issues in this matter, the District Court properly could grant Respondents' motion for summary judgment if it found that there were in reality no genuine isssues as to any material facts.

G. The Court of Appeals below disposed of this matter without passing upon any question of the alleged immunity of certain of the Respondents. Hence, this Court should decline to entertain such questions.

ARGUMENT

Respondents respectfully assert that the requested Writ should be denied for the following reasons:

A. QUESTIONS PERTAINING TO THE LAW OF "TAKING" ARE NOT PROPERLY BEFORE THIS COURT AND SHOULD NOT BE ENTERTAINED.

A very large portion of the Petition raises questions related to the law of "taking" of property without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution. Respondents assert that questions concerning whether Petitioners' property was "taken" within the meaning of the United States Constitution are not properly before this Court because of the Petitioners' failure to raise or brief such questions below. Neither the Appellants' Opening Brief nor the Appellants' Reply Brief filed by the Petitioners with the Court of Appeals raised any question of a "taking." This is confirmed by the opinion of that Court. (*See* Petition Appendix at page A-3) Thus, this Court should refuse to entertain questions pertaining to any alleged "taking." *See, e.g., N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 163-64 (1975); *Adickes v. S. H. KRESS and Co.*, 398 U.S. 144, 147 n.2 (1970); *Tyrrell v. District of Columbia*, 243 U.S. 1, 4-6 (1917).

B. THE QUESTION OF WHETHER THE PETITIONERS HAVE ACQUIRED A VESTED RIGHT TO COMPLETE DEVELOPMENT OF A MOBILEHOME PARK IS NOT A "FEDERAL QUESTION."

The law of vested rights involves no federal questions. In *Avco Community Developers, Inc. v. Southcoast Regional Commission*, 17 Cal. 3d 785, 791 (1976), *cert. den.*, 430 U.S. 952 (1977), the California Supreme Court stated the rule of vested rights:

> "[I]f a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit."

As noted by that Court, the doctrine of vested rights is essentially a matter of common law, and, as the exhaustive analysis of that subject therein indicates, the law of vested rights does not involve any federal questions. *See id.* at 791-98. In fact, as noted by the Court of Appeal of the State of California, the basis upon which the vested rights doctrine rests is the common law concept of estoppel. (*See* Petition Appendix at page A-51) The Court of Appeals below concurred that the question of vested rights was to be determined under California law rather than federal law. (*See* Petition Appendix at page A-2)

The Petitioners' only discussion of the law of vested rights appears in the paragraph commencing at the bottom of page 13 of the Petition and refers only to *Avco Community Developers*. They make no attempt to demonstrate how

the doctrine of vested rights raises any federal question for resolution by this Court.

Indeed, that they could not sustain such a claim is apparent from the past decisions of this Court. It has long been settled law that even an act which dispossesses vested rights does not contravene the Constitution of the United States, provided, of course, that it does not impair the obligation of a contract. This proposition was first enunciated over 150 years ago in the case of *Satterlee v. Matthewson*, 27 U.S. (2 Pet.) 380, 413 (1829):

> "The objection, however, which was most pressed upon the court, and relied upon by the counsel for the plaintiff in error, was, that the effect of this Act was to devest rights which were vested by law in Satterlee. There is certainly no part of the Constitution of the United states which applies to a State law of this description; nor are we aware of any decision of this, or of any circuit court, which has condemned such a law upon this ground; provided its effect be not to impair the obligation of a contract...."

Accord, The Proprietors of the Charles River Bridge v. The Proprietors of the Warren Bridge, 36 U.S. (11 Pet.) 420, 539-40 (1837); *Randall v. Krieger*, 90 U.S. (23 Wall.) 137, 147 (1874). *Satterlee* involved an act of the Pennsylvania Legislature which allegedly deprived the Defendent of certain vested real property rights. As this Court noted, such allegations do not present questions of constitutional magnitude.

In sum, the alleged deprivations asserted by the Petitioners do not present questions of federal law which require resolution by this Court.

C. THE OPINION OF THE COURT OF APPEAL BELOW IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN *DOBBINS V. CITY OF LOS ANGELES.*

It appears from the sixth "question presented" by the Petitioners, as well as from their discussion of *Dobbins v. City of Los Angeles*, 195 U.S. 23 (1904), at page 21 of the Petition, that they are relying upon that case in connection with their newly-asserted "taking" claim. Thus, insofar as *Dobbins* pertains to that subject, as argued above, it is inapposite to the within matter.

It is also apparent from the Points and Authorities urged upon this Court by counsel for the City of Los Angeles in *Dobbins*, reprinted at 49 L.Ed. 173-74, that the City did not raise a question of vested rights for this Court's consideration. Those Points and Authorities do not even argue the issue of whether the work which had been completed by the plaintiff at the time of the City's action was sufficiently substantial to warrant a finding that the plaintiff had acquired a vested right to complete her project. Thus, in view of the fact that the City of Los Angeles did not even litigate this particular point, this Court's opinion in *Dobbins* should not be utilized as the standard by which to measure future cases which do in fact turn upon this issue.

Dobbins is also distinguishable from the instant matter upon its facts. Because *Dobbins* was decided in the lower court upon a demurrer, all allegations of the complaint were taken to be true for purposes of the appeal. *See* 195 U.S. at 234. While a review of those allegations led it to conclude that the plaintiff therein had "acquired property rights" by virtue of having purchased certain property and partially erected the proposed gasworks thereon, this

Court was obviously more concerned with the blatant wrong which had been done to the plaintiff by the City of Los Angeles. In fact, it appeared from the allegations of the complaint that the City had conspired with a private party to drive the plaintiff out of business in order to protect that private party's monopoly in the manufacture and supply of gas. *See id.* at 239. Clearly, such conduct could not be, and was not, condoned by this Court.

In the instant matter, there was no innocent petitioner nor any evil governmental entity. Rather, the true facts in this matter reveal the opposite:

Petitioner Asadoor Soojian was a licensed general contractor who, along with other Petitioners, performed work on the site in question without the necessary building or construction permits (*See* Petition Appendix at page A-77). The Petitioners continued this course of conduct even after the Board of Supervisors had tentatively denied their appeal (*See* Petition Appendix at page A-74), in a transparent attempt to bolster their argument that their rights to continue the development had vested.

Thus, it can be seen that *Dobbins* provides no basis upon which the Petitioners herein may rely and cannot be said to be in conflict with the opinion of the Court of Appeals below. Of course, this is particularly true in view of the fact that the decision of the Court of Appeals below turned upon the California law of vested rights, which, as argued above, presents no federal question for resolution by this Court.

D. THIS COURT'S DECISION IN *MAINE V. THIBOUTOT* IS NOT PERTINENT TO THIS MATTER.

In Maine v. Thiboutot, 448 U.S. 1 (1980), this Court made explicit what should have been apparent from the language of 42 U.S.C. Section 1983 and this Court's prior opinions: Section 1983 encompasses not only the violation of rights secured by federal constitutional law but also reaches the transgression of rights established by federal statutory law. *See id.* at 4-7. Thus, *Thiboutot* offers no assistance to the Petitioners here, for they have alleged no violation of any federal statute other than Section 1983 itself.

Respondents believe that the opinion of the Court of Appeals below (*See* Petition Appendix at pages A-1 to A-5) accurately, and with exquisite simplicity, analyzes the law pertinent to this matter. *Thiboutot* is of no assistance to the Petitioners and is not pertinent to this matter.

E. QUESTIONS PERTAINING TO THE ALLEGED REFUSAL OF THE DISTRICT COURT TO PERMIT DISCOVERY ARE NOT PROPERLY BEFORE THIS COURT AND SHOULD NOT BE ENTERTAINED.

Respondents assert that the record in this matter will reflect that the District Court did not refuse to permit the Petitioners to conduct discovery. More importantly, however, for purposes of the pending Petition, this question is not properly before this Court because of the failure of the Petitioners to raise or brief such questions below. Neither the Appellants' Opening Brief nor the Appellants' Reply Brief filed by the Petitioners with the Court of Appeals raised any question concerning the propriety of the conduct of the District Court with respect to the Petitioners' discovery requests. Indeed, as can be seen from the opinion of the Court of Appeals (*See* Petition Apendix at pages A-1 to A-5), there is no mention of such issues anywhere therein. Thus, this Court should refuse to entertain questions pertaining to thes. alleged refusals to permit discovery. *See, e.g., N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 163-64 (1975); *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 147 n.2 (1970); *Tyrrell v. District of Columbia*, 243 U.S. 1, 4-6 (1917).

F. RESPONDENTS' POSITION AT THE PRETRIAL CONFERENCE CONCERNING ISSUES OF FACT IS OF NO CONSEQUENCE IN THIS MATTER.

The Petitioners' outrage at the filing of a motion for summary judgment after the Respondents had asserted in their Pretrial Statement that there were disputed factual issues is of no consequence. The law is well-settled that even when Pretrial Conference Orders specify certain issues to be in dispute, a District Judge may subsequently grant a motion for summary judgment upon the grounds that such issues are not really in dispute and that there are no genuine issues as to any material facts. *See, e.g., S.E.C. v. Murphy*, 626 F.2d 633, 639 n.5. (9th Cir. 1980); *Irving Trust Co. v. United States*, 221 F.2d 303, 305 (2nd Cir.), *cert. den.*, 350 U.S. 828 (1955).

G. THE QUESTION OF THE IMMUNITY OF CERTAIN OF THE RESPONDENTS WAS NOT PASSED UPON BY THE COURT OF APPEALS BELOW AND SHOULD NOT BE ENTERTAINED BY THIS COURT.

Review of the opinion of the Court of Appeals below (Petition Appendix at pages A-1 to A-5) reveals that that Court did not pass upon any question of immunity raised by any of the parties in this matter. Thus, this Court should decline to entertain any such questions. *See, e.g., N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 163-64 (1975); *Ramsey v. United Mine Workers of America*, 401 U.S. 302, 312 (1971).

CONCLUSION

Based upon the foregoing, the Respondents respectfully urge this Court to deny the Petition for Writ of Certiorari.

DATED: August 30, 1982.

Respectfully submitted,

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